IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Revision No. 686 of 2001
(Old No. 1343/1985)

Taukir & another … Revisionists

Versus

State of U.P. … Opposite Party

Sri Raman Shah learned counsel for the revisionists
Learned A.G.A. for the opposite party

Hon'ble B.C. Kandpal, J.

This criminal revision arises out against the judgment and order dated 27.06.1985 passed by Sessions Judge, Pauri Garhwal dismissing the appeal of the revisionists under Section 60 Excise Act in Criminal Appeal No. 32 of 1985 and confirming the judgment passed by C.J.M. Pauri Garhwal, who convicted the revisionist under Section 60 of the Excise Act and sentenced to undergo one year Rigorous Imprisonment each and fine of Rs. 1,000/- each and in default of payment, further six month rigorous imprisonment.

Brief facts giving rise to this revision are that a written report dated 23.01.1983 was lodged by Sri P.R. Misra, the than S.D.M., Kotdwara with the allegations that on 23.01.1983 at about 8:00 p.m. while the S.D.M. along with other staff members was on way back from Pauri Garhwal after attending monthly meeting in Government Jeep No. UTS 286, a jeep bearing Registration No. UTS 525 was intercepted by him and found in the search of that Jeep that the same was lodged with 10 gunny bags full of bottles. On having suspicion of intoxicants, the bags were opened, resulting in recovery of 859 bottles of illicit liquor. After verification bottled were again packed in the gunny bag and it was sealed. Companion of the

driver Taukir (revisionist) made his escape good during the aforesaid process. The S.D.M. and his team ultimately took the driver with jeep as well as recovered articles to the police station Kotdwara along with written report.

On the information, the police registered the case. After conducting usual investigation and on the basis of the expert opinion of Excise Inspector, the police submitted chargesheet against the accused/revisionists. The learned trial court i.e. C.J.M. Pauri Garhwal, after having perused the evidence on record and hearing the learned counsel for the parties was pleased to convict the accused/revisionists Taukir and Ranjeet Singh @ Raza under Section 60 of the Excise Act.

Learned Magistrate awarded a sentence of one year R.I. each and also imposed a fine of Rs. 1,000/- each and in default of making payment further R.I. for six months. Learned C.J.M. also confiscated the Jeep in question in favor of the State Government vide judgment and order dated 06.05.1985.

Feeling aggrieved by the aforesaid judgment and order the accused/revisionists preferred the appeal before the court of learned Sessions Judge, Pauri Garhwal who also dismissed the appeal relating to the findings of conviction and sentence of the appellants vide judgment and order dated 27.06.1985.

The learned Sessions Judge, however, set aside the order of confiscation of Jeep No. UTS 525 and directed that the Jeep in question shall be in the custody of the Supurdar as before till confiscation proceedings.

The appellants Taukir and Ranjeet Singh @ Raza feeling aggrieved by the judgment of the appellate court i.e. learned Sessions Judge, Pauri Garhwal, preferred revision before the

High Court of Allahabad which has been transferred to this Court after creation of Uttaranchal State, for disposal.

During the pendency of the revision the revisionist No. 2 Ranjeet Singh @ Raza died.

Heard the learned counsel for the revisionists, learned A.G.A. and perused the record.

First of all, learned counsel for the revisionist has placed the argument that the entire proceedings are vitiated because the S.D.M. who conducted the search and seizure proceedings did not prepare the search memo and the copy of the recovery memo containing to the recovered articles, had never been delivered to the accused.

I do not find any force in the argument advanced by the learned counsel for the revisionists. This is a case in which the S.D.M. an officer of the Revenue Department while was on the way back from Pauri, all of a sudden found a Jeep in question on the road in the night and on search, S.D.M. and his team found that the Jeep was loaded with 10 gunny bags and ultimately it was found that the illicit liquor was kept in those bags.

The arresting officer at the time of the occurrence was not expected to prepare the search memo in anticipation and he was also not expected to collect the independent witnesses. It is true that the written report of arrest, seizure and recovery of illicit liquor was reduced in writing at the spot but the copy of the same was not delivered to the accused/revisionists. But all these circumstances are mere irregularities and it cannot be said in any way that the entire proceedings are to be vitiated on this count.

Learned counsel for the revisionists has further argued that the ground of believe before the search was not adduced in writing by the officer who made the search of the vehicle in question.

I again do not find force in this argument because under the above circumstances of the instant case, the officer concerned had no opportunity to record the grounds of his believe that an offence was being committed at any time before the Jeep was intercepted and the disputed articles recovered there from.

The S.D.M. had no prior indication with regard to the recovery of the illicit liquor. Hence it was a case of chance recovery of the illicit liquor, which was being transported within the prohibited area.

Learned counsel for the revisionists has further argued that without any analysis by the chemical examiner, the contents of the bottles could not be proved to be country made liquor and the opinion of the Excise Inspector could not be termed to be finally.

On the analysis of the evidence on record, I find myself unable to accept the argument advanced by the learned counsel for the revisionists.

The Excise Inspector in the present case found seals intact and the same was tallying with the seal of sample. The Excise Inspector has deposed in his statement before the court that he had long experience of about 12 years and he had tested about five thousand sample of illicit liquor. This witness has also deposed that he was trained in the branch of testing liquors. Therefore, I am of the view that the court below has committed

no illegality in placing the reliance in the statement of Excise Inspector and his report.

Further on the assessment of evidence, I found that all the eyewitnesses produced by the prosecution have corroborated the prosecution case. I do not find any infirmity in the statement of the prosecution witnesses with regard to the recovery of the gunny bags containing 859 bottled of illicit liquor.

For the reasons stated above, I come to the conclusion that the revision does not carry any force and the same is liable to be dismissed. Judgment and order passed by the courts below require no interference by way of this revision.

I find myself in total agreement with the findings recorded by both the courts below relating to the conviction of the revisionists.

However, I am of the view that in this case the recovery was made on 23.01.1983 i.e. about more than 21 years ago. The revision against the conviction and the appellate court order had also been preferred before the High Court in the year 1985. The revisionist is on bail since then. Therefore, to my mind it would not be just and proper to send the revisionist again to jail in order to serve out the remaining punishment.

The record shows that the revisionist has already undergone a period of more than 65 days in jail during the proceedings of this case. Therefore, it would be just and proper to award sentence of fine instead of sending the revisionist again to jail after a period of about 20 years (as the revision has been preferred in the year 1985). I, therefore, think it proper to pass an order modifying the sentence awarded by the court below to the extent that instead of sentence of R.I. the

revisionist will have to pay a fine of Rs. 3,000/-. In case, the revisionists has deposited the fine awarded by the court below, then the same shall be adjusted.

With the aforesaid observations, the revision is allowed in part and the sentence of punishment and fine is modified as mentioned above.

(B.C. Kandpal, J.)

August 12th, 2004
ASWAL